IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CRIMINAL MISC. PETITION NO.496/2005
(M/s. Ganesh Automobiles & Anr. Vs. State & Ors.)

Date of order : October 09, 2006

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Sachin Acharya, for the petitioners.
Mr. L.R. Upadhyay, Public Prosecutor.
Mr. Sandeep Mehta, for the non-petitioner.

The present misc. petition under Section 482 Cr.P.C. has been filed by the petitioner for quashing of FIR No.40/2005 registered against the petitioners on 21.2.2005 at Police Station Kotwali Dungarpur for offence under Section 420, 409 and 120-B IPC.

Brief facts of the case are that complainant - non-petitioner No.2 filed a complaint against the petitioners before the Chief Judicial Magistrate on 18.2.2005 and the same was forwarded to the Police Station Kotwali District Dungarpur under Section 156 (3) Cr.P.C. for investigation. The complainant has alleged in the FIR that she was sub-dealer of the

petitioner's firm and was continuously purchasing two wheelers and spare parts of Bajaj Automobile Company Ltd. It was further alleged that in the year 1995 she opened a current account being No.28171 in the name of M/s. Raj Mandir Motors, Dungarpur at Union Bank of India Branch at Bapu Bazar, Udaipur. The petitioner No.2 some how or the other received one signed cheque book from the complainant and assured her that whenever she will make purchase from him or his firm then he will deposit the signed cheque by inserting the requisite amount. The said cheque book was taken by the petitioner from the complainant at Dungarpur in presence of one Rajesh B. Shah. It was further alleged in the complaint by the complainant that later on she started making payments by way of demand drafts and requested the petitioner to give back her signed cheque book upon which the petitioner is alleged to have replied that he has lost the cheque book. It was also alleged that the petitioner assured her that he would not misuse the signed cheques of the complainant. It was further alleged that the complainant did not operated her bank account since long but the petitioner with the help of bank officials deposited a sum of Rs.4,000/- in the said bank account of complainant on 29.10.2004 and subsequently deposited various cheques, which were allegedly given in the year 1995 to the petitioner by the complainant. Those cheques were dishonoured and now a false case for offence under Section 138 of NI

Act has been filed with ulterior motive. The said complaint is under investigation.

The petitioners are alleging that the said FIR is totally baseless and has been filed only to humiliate the petitioners and not to pay the amount which is actually due against the complainant as per the blance-sheet of the petitioner's firm. Learned counsel for the petitioners has contended that there is no ingredients in the FIR which constitute offence under Sections 420 and 409 I.P.C. and this FIR is out come of the proceedings initiated by the petitioners against the non-petitioner No.2 under Section 138 of NI Act.

Learned counsel for the petitioners has argued that prima facie no offence is made out against the petitioners as per the ingredients of FIR. The said FIR is to pre-empt the proceedings under Section 138 of NI Act initiated by the petitioners against the non-petitioner No.2. The Bank account was never closed, therefore, there was no occasion for any person to deposit Rs.4,000/- in the said bank account as alleged in the complaint. The cheques were not dishonoured on account of closure of account but for insufficient funds. Further, learned counsel for the petitioners has contended that allegations with regard to re-opening of account is baseless because as per the banking practices any account once opened cannot

be closed until and unless there is an application in that regard by the account holder. If it is presumed that the account was closed then, the same account can never be reopened. Therefore, the allegations are false and essential element of cheating is missing. There was commercial transaction between the parties as admitted by the complainant herself. The complainant admits that she started making payments of outstanding by way of demand drafts but she nowhere states that entire outstanding was paid. Thus, it is clear that amount was still left outstanding with the complainant and therefore, her cheques were presented in the bank and the same were dishonoured due to insufficient funds. Thereafter, proceedings under Section 138 of NI Act were initiated against the complainant, which are still pending. Further, it is stated that no case for offence under Section 409 I.P.C. is made out against the petitioner in the present case. The complainant has not disclosed that in the commercial transactions, there was much more outstanding against her then the cheque amount, which were dishonoured by the Bank due to insufficient funds. Therefore, it is obvious that on the basis of reckless and bald allegations, FIR has been filed to harass the petitioners. Hence, it is prayed that such an FIR deserves to be quashed.

Learned counsel for the petitioners has invited the attention of this Court towards following

judgments :

1. 1999 (8) SCC 468
   (Sunil Kumar Vs. Escorts Yamaha)
2. 2004 (3) R.Cr.D. 250
   (SK Gulati Vs. State of Rajasthan)
3. 1992 Suppl (1) SCC 335
   (State of Haryana Vs. Bhajanlal)
4. 2000 (4) SCC 168
   (Hridaya Ranjan Pd. Vs. State of Bihar)
5. 2002 (1) SCC 241
   (SW Palanitkar Vs. State of Bihar)
6. 2003 (3) SCC 11
   (Ajay Mitra Vs. State of MP)
7. 2004 (6) SCC 422
   (Dr. Suresh Gupta Vs. Govt of NCT)
8. 2006 (6) SCC 669
   (Ram Biraji Vs. Umesh Kumar)
9. 1999 (2) RCD 1035 (Raj.)
   (Gyanchand Jain Vs. State of Raj.)

While placing reliance upon the aforesaid judgments, learned counsel for the petitioners prayed that when essential ingredients constituting offence under Section 420 I.P.C. are absent, therefore in view of the ratio laid down by Hon'ble Supreme Court in case of State of Harayana Vs. Bhajan Lal (supra), the instant FIR deserves to be quashed.

Per contra, learned Public Prosecutor as well as learned counsel appearing on behalf of non-petitioner No.2 vehemently opposed the prayer made by the learned counsel for the petitioners for quashing of FIR.

First contention made by the learned counsel for the non-petitioner No.2 is that investigation is going on, therefore, no interference is warrant by this Hon'ble Court while exercising power under Section 482 Cr.P.C. He has further contended that as per the allegations levelled in the FIR, prima facie case is made out against the petitioners and if there is allegation that closed account was re-opened by another person and the cheques, which were issued in the year 1995, were used in the year 2004, then, obviously regular investigation is required to be made in the matter. Learned counsel for the non-petitioner also contended that while considering as many as six judgments of Hon'ble Supreme Court as well as other High Courts, this Court in case of Dinesh Lodha Vs. State of Rajasthan & Anr., reported in 2002 (2) Cr.L.R. (Raj.) 1079 held that Court should not exercise extra ordinary power under Section 482 Cr.P.C. to quash FIR where the investigation is pending with the Police and this Court should not interfere with the investigation of the case as power under Section 482 Cr.P.C. is required to be exercised in rarest to rare cases and this is not one of them.

Learned counsel for the non-petitioner has invited the attention of this Court towards the judgment rendered by Hon'ble Supreme Court in State of Haryana Vs. Bhajan Lal (supra) and contended that the present case does not fall in the ratio laid down by Hon'ble Supreme Court in the aforesaid case. He argued that recently this Hon'ble Court in case of M/s. Bakemans Ind. Pvt. Ltd. & Ors. Vs. State & Ors. (SB Criminal Misc. Petition No.131/2006 decided on 10.8.2006) has taken view that inherent powers vested with the High Court under Section 482 Cr.P.C. can be exercised at any stage as per the language of Section 482 Cr.P.C., if necessary to give effect to any order under the Code to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Further, it was observed in the aforesaid judgment that inherent powers can be exercised to secure the ends of justice but for the same it is the duty of the Court to see that whether upon perusal of the FIR, offence is made out or not. If yes, then certainly it requires regular investigation. The investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offence.

In the present case, investigation is required to be made with regard to the allegations levelled in the FIR in respect of re-opening of bank account, which is alleged to be closed by the non-

petitioner No.2. The basic question which is required to be investigated by the Police is whether bank account of complainant was closed and, thereafter, same was re-opened by the petitioners. Therefore, this Court vide order dated 17.11.2005 while sending case-diary back to the investigating officer observed that it is expected from the Investigating Officer that he will complete the investigation from the Bank authorities within a period of two weeks and will send the case diary back to this Court on the next date of hearing. Meaning thereby, prima facie there are certain allegations upon which investigation is required to be made. Therefore, it is prayed by the learned counsel for the non-petitioner that the misc. petition filed by the petitioner for quashing of FIR under Section 482 Cr.P.C. may kindly be dismissed.

Learned Public Prosecutor also vehemently opposed the prayer so made by the learned counsel for the petitioners and prayed that matter is pending investigation and if ultimately the allegation levelled in the FIR are found to be false after investigation, then obviously, investigating agency will take decision as per the investigation. Therefore, no interference is warranted at this stage.

I have considered the rival contention made by both the parties as well as learned Public Prosecutor and perused the record of the case.

It is settled preposition of law that while exercising inherent powers under Section 482 Cr.P.C., the Court can quash any complaint or FIR if no prima-facie case is made out. The Apex Court has also given certain guidelines in the case of State of Haryana Vs. Bhajan Lal (supra) in which it is held that upon perusal of the complaint or FIR if a prima facie case is made out that requires regular investigation, then the Court must not in the circumstances, rush to quash FIR or complaint. Admittedly, in the present case it is not disputed by the complainant that cheque book was issued by her and there was business relation between the parties. It is also not disputed that the bank account was opened by the complainant in the year 1995. The only dispute is that the said bank account was closed by her and thereafter, the petitioners with the connivance of bank officials re-opened the said account and used the signed cheques, which were said to be issued and given by her to the petitioners in the year 1995 though it was assured by the petitioners that they will not misuse those signed cheques. The complainant is disputing that after issuance of cheque-book in the year 1995, later on, the payment of outstanding amount were made through demand drafts and petitioners were instructed not to use those signed cheques. So also, the bank account was closed by her but somehow, it was reopened and later on cheques were deposited by the petitioners and same were dishonoured

due to insufficient fund. Therefore, the matter is required to be investigated from the bank authorities. It is not a case wherein any interference is warranted by this Court to quash the FIR but it is a matter in which truth can come out in the investigation because all the allegations with regard to re-opening of the Bank account and using of cheques which are admittedly signed and given to the petitioners by the complainant in the business transactions in the year 1995. The complainant's case is totally based upon the contention that though she issued cheques in the year 1995 but later on she instructed the petitioners not to use signed cheques and the bank account was also closed but it was re-opened by the petitioners with the connivance of bank officials. Therefore, while following the decision rendered in Bhajanlal's case (supra), the investigation is required to be made in the present case because there is specific allegations against the petitioners that they re-opened the complainant's bank account with the connivance of the bank officials, which had already been closed by the complainant. Therefore, because complainant is not disputing her signature upon cheques so given to the petitioners, it is desirable from the Investigating Officer that he will first conduct proper investigation from the Bank authorities with regard to closing and re-opening of the bank account of the complainant. Till then, the petitioner shall not be arrested and after investigation from the bank, the

Investigating Officer will be free to take decision as per conclusion of the investigation. It is expected of the Investigating Officer that he will conduct fair investigation and whatever material both the parties produce before him will be considered properly.

With the aforesaid observations, the misc. petition is disposed of.

(GOPAL KRISHAN VYAS), J.

arun